

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

LELAND W. HAMILTON,)
)
)
 Plaintiff,)
v.) CASE NO. _____
)
DEPUY ORTHOPAEDICS, INC.;)
DEPUY SYNTES, INC.)
f/k/a DEPUY, INC.; MEDICAL DEVICE)
BUSINESS SERVICES, INC., f/k/a)
DEPUY, INC.; JOHNSON & JOHNSON;)
and JOHNSON & JOHNSON SERVICES)
INC.)
)
 Defendants.)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants DePuy Synthes, Inc. (f/k/a DePuy, Inc.), Medical Devices Business Services, Inc.¹, Johnson & Johnson, and Johnson & Johnson Services, Inc. (“Defendants”) hereby remove the above-captioned case to the United States District Court for the Western District of Texas. Removal is proper on the following grounds:

PROCEDURAL HISTORY

1. The present lawsuit was filed by Plaintiff Leland W. Hamilton on September 6, 2018, in the District Court of Midland County Texas, Cause No. CV-54892 (the “Lawsuit”).
2. DePuy Synthes, Inc. was served with the Lawsuit on October 2, 2018.
3. Medical Device Business Services, Inc. was served with the Lawsuit on October 1, 2018.

¹ Plaintiff sued both DePuy Orthopaedics, Inc. and Medical Device Business Services, Inc. But they are the same entity. DePuy Orthopaedics, Inc. was renamed Medical Device Business Services, Inc. and now goes by that name.

4. Johnson & Johnson was served with the Lawsuit on October 2, 2018.
5. Johnson & Johnson Services, Inc. was served with the Lawsuit on October 1, 2018.

6. The Lawsuit is a civil action in which Plaintiff alleges that he sustained injuries due to alleged defects in the DePuy Global Advantage Total Shoulder Implant System medical device implanted in Mr. Hamilton. [Compl. at ¶¶ 3.01-3.09.]

TIMELINESS OF REMOVAL

7. Defendants' Notice of Removal is timely under 28 U.S.C. § 1446(b)(1) because this Notice is filed within 30 days after the earliest receipt by a defendant named in this case, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief.

CITIZENSHIP OF THE PARTIES

8. Plaintiff Leland W. Hamilton is a citizen of Texas. [Compl. at ¶1.01.]
9. Defendant DePuy Synthes, Inc. is incorporated in Delaware with its principal place of business in Warsaw, Indiana and therefore is considered a citizen of both Delaware and Indiana for purpose of diversity jurisdiction. *See Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010) (holding that a corporation is a citizen of its place of incorporation and its "principal place of business," which is "the actual center of direction, control, and coordination" of the corporation's activities).
10. Defendant Medical Device Business Services, Inc. is incorporated in Indiana with its principal place of business in Warsaw, Indiana, and therefore is considered a citizen of Indiana for purpose of diversity jurisdiction. *See id.*
11. Defendant Johnson & Johnson is a New Jersey corporation with its principal place of business in New Jersey, and therefore is considered a citizen of New Jersey for purpose of

diversity jurisdiction. Defendants deny that the Court has personal jurisdiction over Johnson & Johnson.

12. Defendant Johnson & Johnson Services, Inc. is a New Jersey corporation with its principal place of business in New Jersey, and therefore is considered a citizen of New Jersey for purpose of diversity jurisdiction. Defendants deny that the Court has personal jurisdiction over Johnson & Johnson Services, Inc.

JURISDICTION EXISTS PURSUANT TO 28 U.S.C. § 1332

13. This Court has jurisdiction over this action under 28 U.S.C. §§ 1332 because (1) there is complete diversity of citizenship between the Plaintiffs and the Defendants, and (2) the amount in controversy exceeds \$75,000, exclusive of interest and costs. Complete diversity existed both at the time the case was filed and at the time of removal.

14. As set forth in the immediately preceding section, this case involves citizens of different States. Plaintiff is a citizen of Texas and none of the corporate defendants is a citizen of Texas.

15. Plaintiff alleges in his Complaint that he suffered and will suffer: “physical pain,” “mental suffering,” “physical impairment,” and “physical disfigurement.” [Compl. at ¶ 11.03.]

16. In addition to actual damages, Plaintiff seeks punitive damages as well. [Compl. at ¶ 12.00.]

17. It is widely recognized that personal injury claims facially meet the \$75,000 jurisdictional threshold. *See, e.g., In re Rezulin Prods. Liab. Litig.*, 133 F.Supp. 2d 272, 296 (S.D.N.Y. 2001) (finding that a complaint alleging various injuries from taking a prescription drug “obviously asserts a claim exceeding \$75,000”); *Smith v. Wyeth, Inc.*, 488 F. Supp. 2d 625, 630-31 (W.D. Ky. 2007)(denying motion to remand); *Copley v. Wyeth, Inc.*, No. 09-722, 2009 WL 1089663 (E.D. Pa. Apr. 22, 2009) (same).

18. Thus, the amount in controversy in this matter exceeds \$75,000, exclusive of interest and costs, as required by 28 U.S.C. § 1332(a).

OTHER REMOVAL REQUIREMENTS MET

19. This Notice of Removal is in compliance with Rule 11 of the Federal Rules of Civil Procedure.

20. Copies of all pleadings filed and orders received in this matter are attached as

Exhibit A.

21. Removal of this action is not prohibited by 28 U.S.C. § 1445.

WHEREFORE, Defendants hereby notify the Court of the removal of this action from the District Court of Midland County, Texas.

Dated: October 30, 2018

Respectfully submitted,

BARNES & THORNBURG LLP

By: /s/ Michael H. Borofsky
Michael H. Borofsky
State Bar No. 24101534
mborofsky@btlaw.com
2121 N. Pearl St., Suite 750
Dallas, TX 75201-6908
Telephone: (214) 258-4200

*Attorney for Defendants DePuy Synthes,
Inc., Medical Devices Business Services,
Inc., Johnson & Johnson, and Johnson &
Johnson Services, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of October, 2018, a copy of the foregoing was filed electronically and served upon the following counsel.

Monica C. Vaughan
Spencer T. Speed
Houssiere, Durant & Houssiere, LLP
1990 Post Oak Boulevard, Suite 800
Houston, TX 77056-3812

/s/ Michael H. Borofsky